

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING  
CORPORATION (“COFINA”),

Debtor.

PROMESA

Title III

No. 17 BK 3284-LTS

**JOINT REPORT OF MOVANT AMBAC ASSURANCE CORPORATION AND  
RESPONDENTS FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR  
PUERTO RICO AND PUERTO RICO FISCAL AGENCY AND FINANCIAL  
ADVISORY AUTHORITY WITH RESPECT TO MOTION FOR ENTRY OF ORDER  
AUTHORIZING DISCOVERY UNDER BANKRUPTCY RULE 2004**

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Movant Ambac Assurance Corporation (“Ambac”) and Respondents the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Commonwealth of Puerto Rico (the “Commonwealth”), by and through the Oversight Board as the Commonwealth’s representative pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”),<sup>2</sup> the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and together with the Oversight Board and the Commonwealth, the “Respondents”),<sup>3</sup> respectfully submit this joint report in response to the Court’s January 17, 2018 Order [ECF No. 2261].

On November 28, 2017, Ambac filed a Rule 2004 Motion seeking from the Oversight Board, AAFAF, the Commonwealth, and COFINA information that Ambac contends is necessary for it to fully understand how the collection of the SUT has been affected by Hurricane Maria (the “SUT Rule 2004 Motion”) [ECF No. 1873]. The Parties submitted a joint status report on January 5, 2018, wherein the Parties represented that the Respondents had agreed to produce available data from the Department of Treasury, as described more fully below.

1. On January 4, 2018, Respondents reported that they would produce the following information to Movants within the following few weeks:

- Raw data on SUT collections on a monthly basis in the time after Hurricane Maria (*i.e.* late September through December);
- Raw data on a daily basis in the time after Hurricane Maria;
- Older forecasts and estimates that are based on the previous fiscal year (2016-2017);

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<sup>2</sup> PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

<sup>3</sup> The Movants and Respondents are collectively referred to as the “Parties.”

- Schedules of SUT collection transactions that were carried out in the time after Hurricane Maria, including data on the numbers of fiscal terminals that were working;
- Estimates on the impact of the SME Executive Order;
- Publications issued by Treasury to merchants regarding SUT collection in the time after Hurricane Maria;
- Daily information from Banco Popular regarding the flow of the SUT, including what was transferred to COFINA;
- Schedules regarding SUT collection data from the top 25 retailers (identified by SIC code<sup>4</sup>);
- Narrative descriptions of the data collected and publications issued in the time after Hurricane Maria;
- Projections/data that will become part of the Fiscal Plan.

2. On January 18, 2018, counsel for AAFAF informed Ambac that AAFAF believed it would be able to produce documents to Ambac by the week of January 29. In response, Ambac requested to be kept apprised of the progress of the review and production, and also requested information regarding the categories of documents that would be produced.

3. Counsel for AAFAF responded that they would provide information regarding the categories of documents when the information was available.

4. On January 24, 2018, Ambac sent a letter to counsel for AAFAF stating that because no documents had yet been produced, it would pursue recourse with this Court if production of the agreed-to documents did not begin immediately. *See* Exhibit A.

5. On January 26, 2018, counsel for AAFAF stated that the Department of Treasury had provided data to counsel for AAFAF regarding (1) aggregate SUT collections after Hurricane Maria, on both a monthly and daily basis; and (2) daily information from Banco Popular regarding the flow of the SUT, including transfers to COFINA. Counsel for AAFAF further stated that it would make a production to Ambac of those materials as soon as

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<sup>4</sup> The Standard Industrial Classification (“SIC”) is a system for classifying industries by a four-digit code.

practicable. Counsel stated that the collection process for all of the additional categories of documents that Respondents agreed to produce remains on-going. Counsel has not provided any timeframe within which it will provide any of the additional categories of agreed-to documents.

6. On January 31, 2018, the Parties agreed that document production would be subject to the same confidentiality terms set forth in the Stipulation Order for the Production and Exchange of Confidential Information entered in the Commonwealth-COFINA dispute [Case No. 17-257, ECF No. 56]. Counsel for AAFAF represented that they would begin producing documents later that day.

*[Remainder of Page Intentionally Left Blank]*

Dated: January 31, 2018  
San Juan, Puerto Rico

**FERRAIUOLI LLC**

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# **Exhibit A**

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Partner  
DIRECT DIAL NUMBER  
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FAX: 212-822-5421

January 24, 2018

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FAX: 8610-5969-2707

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**VIA EMAIL**

Peter Friedman, Esq.  
O'Melveny & Myers LLP  
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New York, NY 10036

Re: SUT Rule 2004 Motion

Dear Peter:

We write on behalf of Ambac Assurance Corporation ("Ambac") regarding the SUT Rule 2004 Motion filed by Ambac on November 28, 2017.

In the eight weeks that have passed since Ambac filed its Motion, Ambac has met and conferred with counsel for the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") twice to discuss and negotiate the scope of the information requests. In the Joint Status Report provided to the Court on January 5, 2018, the Parties represented that Respondents had agreed to provide Ambac with the data available from the Department of Treasury.

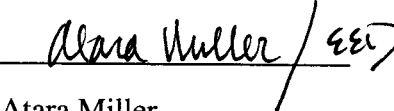
Despite its repeated representations, after almost two months, AAFAF has not produced a single document. Instead, AAFAF has continued in its established pattern of evasion, promising to produce documents at some future date and providing nothing. In light of AAFAF's failure to produce documents in a timely manner, Ambac cannot in good faith continue to rely on AAFAF's representations. Ambac is entitled to information relating to the impact of Hurricane Maria on SUT collection pursuant to Rule 2004 and expects that available information responsive to its requests will be produced immediately.



January 24, 2018  
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If AAFAF does not immediately begin production of the agreed-to documents, Ambac will pursue recourse with the Court. As you know, we have been ordered to provide the Court with a status report on January 31, 2018. We remain hopeful that we can report meaningful progress. If we cannot, we will seek a Court order directing expedited production of the long-promised documents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Atara Miller" followed by a stylized flourish or initials.

Atara Miller

cc: Timothy Mungovan  
Daniel Cantor